



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2005-0162; FRL-9925-70]

Carbofuran; Reinstatement of Specific Tolerances and Removal of Expired Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Order reestablishing and amending tolerances.

SUMMARY: EPA is amending its regulations to reinstate four import tolerances for carbofuran, in order to comply with a D.C. Circuit decision and order vacating the Agency's revocation of those tolerances. EPA is also removing several carbofuran time-limited tolerances that have already expired. Because this action is being taken to conform the regulations to the court's order and to accurately reflect the current legal status of these tolerances, EPA is issuing this as a final order that is effective upon publication.

DATES: Effective [*insert date of publication in the Federal Register*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2005-0162, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; email address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

II. What is the Agency's Authority for Taking this Action?

EPA is taking this action pursuant to the authority in section 408(g)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(g)(2)(C).

III. What Action is the Agency Taking?

EPA is revising the tolerance regulations in title 40 of the Code of Federal

Regulations (CFR) part 180 to reflect the reinstatement of four import tolerances for carbofuran, in compliance with a decision and order from the D.C. Circuit in *National Corn Growers Association v. EPA*, 613 F.3d 266 (D.C. Cir. 2010). EPA is also amending 40 CFR part 180 to delete the listings of other carbofuran tolerances that have expired, and thus are no longer valid.

IV. Why is EPA Taking this Action?

In the **Federal Register** of July 31, 2008 (73 FR 44864) (FRL-8373-8), EPA proposed to revoke all carbofuran tolerances and provided a 60-day public comment period. The revocations were based on an Agency determination that the risk from aggregate exposure from the use of carbofuran did not meet the safety standard of FFDCA section 408(b)(2). In the **Federal Register** of May 15, 2009 (74 FR 23046) (FRL-8413-3), EPA finalized the revocation of all of the carbofuran tolerances, effective December 31, 2009. During the objection period, the carbofuran registrant, FMC Corporation, and three grower associations (National Corn Growers Association, National Sunflower Association, and National Potato Council) submitted objections to EPA's tolerance revocations and requested an administrative hearing. EPA concluded that the regulatory standard for holding an evidentiary hearing had not been met and issued an order in the **Federal Register** of November 18, 2009 (74 FR 59608) (FRL-8797-6), which denied the objections and requests for hearing and included the Agency's reasons.

FMC Corporation, in conjunction with the three grower associations, challenged EPA's decision in the Court of Appeals for the D.C. Circuit. The court upheld EPA's revocation of all carbofuran domestic tolerances and denial of the hearing requests, but

vacated EPA's revocation of the four import tolerances (bananas, coffee, rice, and sugarcane). The Court of Appeals for the D.C. Circuit also denied the subsequent petition filed by FMC and the three grower associations for rehearing and rehearing en banc. The petitioners appealed this decision to the Supreme Court. On May 31, 2011, the Supreme Court declined to hear the request by FMC and the three grower associations to review EPA's 2009 decision to revoke all domestic tolerances for carbofuran, ending these legal challenges. For more information, see http://www.epa.gov/oppsrrd1/reregistration/carbofuran/carbofuran_noic.htm.

Because the D.C. Circuit vacated EPA's revocation of the four import tolerances for carbofuran, they are in fact, currently in effect. EPA is revising the CFR to accurately reflect the current legal status of the four import tolerances by removing the expiration dates in their listings in 40 CFR 180.254(a). Specifically, EPA is removing the expiration date of December 31, 2009 associated with the carbofuran tolerances in 40 CFR 180.254(a) on banana; coffee, bean, green; rice, grain; and sugarcane, cane.

Also, to eliminate potential confusion, EPA is removing other carbofuran tolerances that expired on December 31, 2009. Because these tolerances have expired, they are no longer legally valid. Consequently, EPA is deleting the following tolerances: (1) in 40 CFR 180.254(a) on alfalfa, forage (of which no more than 5 ppm are carbamates); alfalfa, hay (of which no more than 20 ppm are carbamates); barley, grain (of which no more than 0.1 ppm is carbamates); barley, straw (of which no more than 1.0 ppm is carbamates); beet, sugar, roots; beet, sugar, tops (of which no more than 1 ppm is carbamates); corn, field, forage (of which no more than 5 ppm are carbamates); corn, field, grain (of which no more than 0.1 ppm is carbamates); corn, field, stover (of which

no more than 5 ppm are carbamates); corn, pop, grain (of which no more than 0.1 ppm is carbamates); corn, pop, stover (of which no more than 5 ppm are carbamates); corn, sweet, forage (of which no more than 5 ppm are carbamates); corn, sweet, kernel plus cob with husks removed (of which no more than 0.2 ppm is carbamates); corn, sweet, stover (of which no more than 5 ppm are carbamates); cotton, undelinted seed (of which no more than 0.2 ppm is carbamates); cranberry (of which no more than 0.3 ppm is carbamates); cucumber (of which no more than 0.2 ppm is carbamates); grape (of which no more than 0.2 ppm is carbamates); grape, raisin (of which no more than 1.0 ppm is carbamates); grape, raisin, waste (of which no more than 3.0 ppm are carbamates); melon (of which no more than 0.2 ppm is carbamates); milk (of which no more than 0.02 ppm is carbamates); oat, grain (of which no more than 0.1 ppm is carbamates); oat, straw (of which no more than 1.0 ppm is carbamates); pepper (of which no more than 0.2 ppm is carbamates); potato (of which no more than 1 ppm is carbamates); pumpkin (of which no more than 0.6 ppm is carbamates); rice, straw (of which no more than 0.2 ppm is carbamates); sorghum, forage (of which no more than 0.5 ppm is carbamates); sorghum, grain, grain; sorghum, grain, stover (of which no more than 0.5 ppm is carbamates); strawberry (of which no more than 0.2 ppm is carbamates); soybean (of which no more than 0.2 ppm is carbamates); soybean, forage (of which no more than 20.0 ppm are carbamates); soybean, hay (of which no more than 20.0 ppm are carbamates); squash (of which no more than 0.6 ppm is carbamates); sunflower, seed (of which no more than 0.5 ppm is carbamates); wheat, grain (of which no more than 0.1 ppm is carbamates); and wheat, straw (of which no more than 1.0 ppm is carbamates); and (2) in 40 CFR 180.254(c) on artichoke, globe (of which no more than 0.2 ppm is carbamates).

V. Why is this a Final Order?

EPA is issuing a final order without providing either notice and an opportunity to comment, or an opportunity to raise objections. For a number of reasons, EPA has concluded that the issuance of a final order pursuant to FFDCA section 408(g)(2)(C) best reflects the current stage of the proceedings in this case, and is most appropriate to the circumstances under the applicable procedures of FFDCA section 408.

With respect to the import tolerances, the court vacated only the portion of EPA's final order that related to the revocation of the four carbofuran import tolerances, not the entire underlying action rulemaking and objections process that preceded the order. EPA has already conducted the procedures required under FFDCA sections 408(e) and (g); the public has previously had an opportunity to comment on and raise objections to the EPA decisions reflected in the amendments to the CFR described in this document. The only revisions to the CFR relating to the import tolerances are those that are being taken merely to be consistent with the court's order, which left EPA with no discretion as to the actions necessary to implement the order. Finally, this action does not therefore affect the legal status or otherwise effect any substantive change to these tolerances, but merely amends the CFR to accurately reflect the present legal status of these tolerances. Because the D.C. Circuit's vacatur rendered EPA's 2009 revocation action without effect, these tolerances are currently in effect.

The deletion from the CFR of the carbofuran tolerances that have already expired presents essentially the same procedural and substantive case. EPA's action does not affect the legal status of these tolerances in any way. The deletion from the CFR of the

currently expired carbofuran tolerances merely reflects the present legal status of these tolerances. In addition, EPA has already conducted the procedures required under FFDCA sections 408(e) and (g) to effectuate these revisions; the public has previously had an opportunity to comment on and raise objections to the EPA decision to establish the expiration dates for these particular tolerances (73 FR 44864, July 31, 2008 (FRL-8373-8); 74 FR 23046, May 15, 2009 (FRL-8413-3); and 74 FR 59608, November 18, 2009 (FRL-8797-6).

VI. When Do These Actions Become Effective?

As stated in the **DATES** section of this document, this order and the corresponding changes to 40 CFR part 180 are effective [*insert date of publication in the Federal Register*].

VII. Statutory and Executive Order Reviews

In this action, EPA is amending 40 CFR part 180 to accurately reflect the current legal status of a number of carbofuran tolerances by means of an order and not a rule (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedure Act (APA), orders are expressly excluded from the definition of a rule (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this order, as explained further in the following discussion.

Because this order is not a “regulatory action” as that term is defined in Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled *Improving Regulation and Regulatory Review* (76 FR 3821, January 21, 2011). As a result, this action is not subject to

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and Executive Order 13211 entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). In addition, since this order is not a rule under the APA (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action does not contain any information collections or impose additional burdens that require approval by OMB under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Nor does this order require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This order directly regulates growers, food processors, food handlers, and food retailers, not States or tribes; nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the State or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as

described in the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531-1538).

VIII. Congressional Review Act (CRA)

The CRA (5 U.S.C. 801 *et seq.*) does not apply to this action because this order n is not a rule as that term is defined in 5 U.S.C. 804(3). EPA will, however, submit a courtesy copy of this document to each House of the Congress and to the Comptroller General of the United States.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 9, 2015.

Jack E. Housenger,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180--[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.254, revise the table in paragraph (a) and revise paragraph (c) to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

(a) * * * *

Commodity	Parts per million
Banana ¹	0.1
Coffee, bean, green ¹	0.1
Rice, grain ¹	0.2
Sugarcane, cane ¹	0.1

¹ There are no U.S. registrations for use of carbofuran on these commodities.

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(c) *Tolerances with regional registrations.* [Reserved]

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